

United Food and Commercial Workers International Union, Local No. 1439, AFL-CIO and P.M. & S., a Division of Price Enterprises, Inc. Cases 19-CC-1530 and 19-CC-1531

31 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 18 November 1983 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Food and Commercial Workers International Union, Local No. 1439, AFL-CIO, Spokane, Washington, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ Member Dennis agrees with the judge that *Teamsters Local 560 (Curtin Matheson)*, 248 NLRB 1212 (1980), in which the Board dismissed an 8(b)(4) complaint based on its interpretation of the *Hearst* cases (*Newspaper Guild Local 69 (Hearst Corp.)*, 185 NLRB 303 (1970), *enfd.* 443 F.2d 1173 (9th Cir. 1971), *cert. denied* 404 U.S. 1018 (1972); *Television Artists AFTRA Washington-Baltimore Local (Hearst Corp.)*, 185 NLRB 593 (1970), *enfd.* 462 F.2d 887 (D.C. Cir. 1972)), is distinguishable from the present case. She thus finds it unnecessary to pass on the *Curtin Matheson* rationale.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in Spokane, Washington, on August 25, 1983. The charges in both of the captioned cases were filed on March 28, 1983, by P.M. & S., a Division of Price Enterprises, Inc. (P.M. & S.).

Thereafter, on April 6, 1983, the Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing alleging a violation by United Food and Commercial Workers International Union, Local No. 1439, AFL-CIO (the Respondent) of Section 8(b)(4)(B) of the National Labor Relations Act (the Act).

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The parties were afforded a full opportunity to be heard; to call, examine, and cross-examine witnesses; and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel, counsel for the Respondent, and the Charging Party's representative.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

Price Enterprises, Inc., the parent corporation of P.M. & S., is a State of Washington corporation with its office and place of business in Spokane, Washington, where it is engaged in the business of retail sales of merchandise. Price Enterprises, Inc. has annual gross sales of goods and services valued in excess of \$500,000, and annually purchases goods and materials valued in excess of \$50,000 directly from sources outside the State of Washington, or from suppliers within the State which in turn obtained such goods and materials directly from sources outside the State.

It is admitted, and I find, that Price Enterprises, Inc. is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

The principal issue raised by the pleadings is whether the Respondent violated Section 8(b)(4)(B) of the Act by picketing and handbilling at the premises of neutral employers or persons.

B. The Facts

At times material herein the Respondent represented the employees of P.M. & S., a Division of Price Enterprises, Inc., a family owned corporation. P.M. & S. operates the clothing, housewares, hardware, and gift items departments within a department store located in Spokane, Washington. The shoe department in this store is operated by L & L Shoe Company, also a division of Price Enterprises, Inc., whereas several other departments within the store are operated by entities not involved in this proceeding.

L & L Shoe Company operates three other shoe stores and approximately nine leased departments within department stores, and also has a warehouse operation which supplies merchandise to these particular stores or outlets. The main headquarters of L & L Shoe Company is in Spokane, Washington, where it shares office space with Price Enterprises, Inc. Its shoe stores are located in Kennewick, Pasco, and Richland, Washington, which

geographical area is known as the Tricities area, located approximately 145 miles from Spokane. It also has a shoe consignment agreement with Totem Sales, a department store in Sunnyside, Washington, located approximately 190 miles from Spokane. Totem Sales is another separate division of Price Enterprises, Inc. and is comprised of various departments including sporting goods, men's and women's clothing, and shoes. L & L Shoe Company has no employees at this store, and its shoes are sold by Totem Sales employees, in return for which services L & L Shoe Company pays a commission.

Price Enterprises has six other divisions not directly involved herein, each consisting of one or more stores in various locations in Washington and Idaho.

The record evidence regarding the operations of the various business entities involved herein is essentially undisputed. There is a companywide profit-sharing plan in which employees of all divisions may participate, and a common medical and vision insurance program covering employees in all divisions. Each division is managed separately, the respective managers having the full authority and responsibility for hiring and firing supervisory personnel and setting the wages, hours, working conditions, and work rates of the employees. Each manager employs buyers for the purchase of goods and/or purchases the goods for his particular division, and there is no overlap whereby a manager or buyer purchases merchandise for other than his own division. The record shows that only a negligible amount is purchased from one division of Price Enterprises, Inc. by another division. Thus, the L & L shoe division annually purchases about 2 percent of its retail sales of goods, primarily handbags, from P.M. & S., and Totem Sales purchases less than 1 percent of its retail sales of goods from P.M. & S. Advertising is handled by the individual division managers, who determine all aspects of how and what is to be advertised and the media in which the ads are to be placed. There is no interchange of employees or supervisory personnel among divisions, and the record shows only sporadic and isolated instances of a former employee of one division being hired by another.

Each division has its own bank account, and funds for payroll and apparently the payment of invoices are withdrawn from the separate accounts and are paid from a centralized or general account managed by an independent accounting firm located in Spokane. The checks which are issued to employees, and apparently suppliers, bear the name Price Enterprises, Inc.

At the end of each month the daily bookkeeping entries of each store are forwarded to the Spokane, Washington accounting firm which performs the appropriate accounting functions and prepares a computerized profit and loss statement for each store and each division. These statements are forwarded to Lee Price, president and chief executive officer of Price Enterprises, Inc. On reviewing the statements, Price, who has no policy or practice of communicating with the division managers on a regular basis, may point out or discuss problems which are brought to his attention primarily as a result of reviewing the monthly statements, but the solutions to such problems are within the discretion of the division manager.

Price is not involved in the day-to-day operations or labor relations of the stores or divisions, and such matters are determined independently by each division and/or store manager, who set the wage rates and establish store policy. While Price has final approval of the budgets for each division, he has not exercised the authority to veto the budgets proposed by the various division managers.

The record shows that Price, along with the division manager of P.M. & S. and a labor consultant, participated in negotiating meetings involving the unit employees of P.M. & S. However, the division manager assumed the authority for determining the final position of P.M. & S. on all contract issues. During the years that the employees of P.M. & S. were represented by the Union, Price did not participate in the resolution of any grievances. About 5 years ago the employees of Totem Sales were represented by a union. Price was asked by the division manager if Price desired to participate in negotiations. Price declined, stating that he had complete confidence in the division manager who had owned and operated the particular store before it was acquired as a separate division by Price Enterprises, Inc. Brown, the division manager, testified that he consulted with Price after each of the initial three or four bargaining meetings, and thereafter was told by Price to proceed without reporting to him as Brown was capable of making the best decision for the store. During a later second series of negotiations, Brown recommended that a specific attorney be hired to conduct the negotiations, and Price agreed. Thereafter, Brown did not further consult with Price concerning the matter. Regarding the instant picketing, Brown recommended and hired the same attorney, after recommending such action to Price.

The complaint alleges and Respondent admits that about February 3, 1983, in furtherance and support of its labor dispute with P.M. & S., it threatened to picket, and commencing about March 24, 1983, and thereafter, did picket the Richland, Kennewick, and Pasco, Washington shoe stores, known as "Two Swabbies" shoes stores, of L & L Shoe Company division and the Sunnyside, Washington facility of Totem Sales division.

C. Analysis and Conclusions

On June 8, 1983, the Regional Director for Region 19 issued a Decision and Direction of Election in *P.M. & S., a Division of Price Enterprises*, Cases 19-RD-1982 and 19-RM-1809, wherein the Union, which represented only the employees of P.M. & S., contended that the appropriate unit should encompass employees of different divisions, including the employees of P.M. & S. and L & L Shoe Company, who worked in the same store in Spokane. This argument was found to be without merit, the Regional Director concluding, inter alia, that the divisions of Price Enterprises, Inc. are not highly integrated or centralized. No request for reviews was taken from this decision.

Respondent maintains that this matter is governed by *Teamsters Local 560 (Curtin Matheson Scientific)*, 248 NLRB 1212 (1980), in which the Board, after summarizing and analyzing the issue of what constitutes a neutral

person within the meaning of Section 8(b)(4) of the Act, found that the employer's operations, through its various branches, exhibited "an appreciable integration of operations, and management policies." The employer's method of permitting its branches to operate autonomously through branch managers is analogous, although certainly distinguishable in degree, from the method by which Price Enterprises, Inc. conducts its business operations through its various divisions. However, the overriding consideration which distinguished *Curtin Matheson* from the instant case is the fact that in *Curtin Matheson* over 50 percent of the dollar amount of merchandise shipped by one branch was ordered by and shipped to customers of other branch warehouses, which received branch credit for the profit made. The Board stated:

Evidently this pattern of cross-shipping represents management policy at the corporate level. Because the warehousing operations are integrated in this manner, any branch can suffer an interruption of its warehousing operation, such as would accompany a strike, with hardly any immediate effect on its business. The branch could continue to seek and take orders as usual.

As discussed above, the divisions of Price Enterprises, Inc., involved herein, purchase only a negligible amount of goods from P.M. & S.

The general and customary points of interrelationship among the entities involved herein which may be regarded as reflecting overall company policy as distinguished from sporadic, insignificant, or nonrecurring contact, are as follows: common ownership and control, two separate divisions doing business within the same premises (in the cases of both the Spokane store and Totem Sales in Sunnyside, Washington), receipt of payroll checks and apparently payment of invoices from common accounts for which, in turn, the separate accounts of each division have been debited, and common health insurance and participation in a profit-sharing program. It is significant to note that, with the exception of two divisions occupying common premises, these same or very similar factors were present in *Curtin Matheson* but that the Board, in summarizing its reasons for finding that the branch warehouse in question was not a neutral person, did not elect to rely on such factors.

Common ownership and potential control of the day-to-day activities of corporate divisions is inherent in every corporate division relationship, and certainly is not a factor to be accorded weight. *Local 749 (Transport, Inc.)*, 218 NLRB 1330 (1975); *Los Angeles Newspaper Guild Local 69 (Hearst Corp.)*, 185 NLRB 303 (1970). Further, in the *Hearst* case, the fact that certain companywide insurance, pension, and salary continuation programs may be accepted or rejected by each division was not considered a factor to be accorded significant weight.¹ Moreover, as previously mentioned, the Board

in *Curtin Matheson* did not appear to attach significance to the fact that all invoices, and presumably payroll checks, were issued at the corporate headquarters. Lastly, while two divisions do business out of common premises, as noted above, their respective business operations are separate in all material aspects.

It appears that, as contended by the General Counsel and the Charging Party, the interrelationships between the various divisions of Price Enterprises, Inc. and between Price Enterprises, Inc., and its various divisions are more analogous to the corporate division scheme detailed in *Teamsters Local 391 (Vulcan Material Co.)*, 208 NLRB 540 (1974), enfd. 543 F.2d 1373 (D.C. Cir. 1976), wherein the Board determined that the corporate divisions therein were neutral persons within the meaning of Section 8(b)(4) of the Act.

The record shows that the divisions herein not only operate autonomously in their day-to-day activity, but are also accorded significant autonomy in conducting nonroutine business matters, such as labor relations; and the centralized processing of payroll checks, and perhaps invoices, the mandatory common insurance and profit-sharing programs, and the use of common premises where the business operations are functionally separated, appear insufficient to warrant the conclusion that the business entities involved herein exhibit "an appreciable integration of operations and management policies" which are indicative of a single enterprise. *Curtin Matheson Scientific*, supra. On the basis of the foregoing, I find that both L & L Shoe Company division and Totem Sales division are neutral persons within the meaning of Section 8(b)(4) of the Act and that, accordingly, the Respondent has violated the Act as alleged.

IV. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effecuate the policies of the Act.

On these findings of fact and conclusions and on the entire record, I make the following

CONCLUSIONS OF LAW

1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. Price Enterprises, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. L & L Shoe Company division and Totem Sales division are "persons" within the meaning of Section 2(1) and Section 8(b)(4) of the Act.

4. By threatening to picket and by picketing the Kennewick, Pasco, and Richland, Washington premises of L & L Shoe Company division and the Sunnyside, Washington premises of Totem Sales division, the Respondent has engaged in, and has induced and encouraged individuals employed by L & L Shoe Company division and Totem Sales division to engage in, a strike or refusal to perform services, and has threatened, coerced, and restrained L & L Shoe Company division and Totem

¹ The record herein does not show that the division managers have any discretion in this latter regard.

Sales division with an object in each case of forcing or requiring L & L Shoe Company division and Totem Sales division to cease doing business with persons engaged in commerce or in an industry affecting commerce and forcing or requiring persons engaged in commerce or in an industry affecting commerce to cease doing business with L & L Shoe Company division and Totem Sales division, and has thereby violated Section 8(b)(4) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, United Food and Commercial Workers International Union, Local No. 1439, AFL-CIO, Spokane, Washington, its officers, representatives, and agents, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by L & L Shoe Company division or Totem Sales division or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require L & L Shoe Company division and Totem Sales division to cease doing business with persons engaged in commerce or in an industry affecting commerce, or to force or require persons engaged in commerce or in an industry affecting commerce to cease doing business with L & L Shoe Company division and Totem Sales division.

(b) Restraining or coercing L & L Shoe Company division and Totem Sales division or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require L & L Shoe Company division and Totem Sales division to cease doing business with persons engaged in commerce or in an industry affecting commerce, or to force or require persons engaged in commerce, or in an industry affecting commerce to cease doing business with L & L Shoe Company division and Totem Sales division.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."³ Copies of the

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director with signed copies of the aforesaid notice for posting by L & L Shoe Company division and Totem Sales division, if willing, at places where they customarily post notices to their employees.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT induce or encourage any individual employed by L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc. to engage in a strike or refusal in the course of such individual's employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc. to cease doing business with persons engaged in commerce, or in an industry affecting commerce, or to force or require persons engaged in commerce or in industry affecting commerce to cease doing business with L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc.

WE WILL NOT restrain or coerce L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc. to cease doing business with persons engaged in commerce or in industry affecting commerce, or to force or require persons engaged in commerce or in an industry affecting commerce to cease doing business with L & L Shoe Company division or Totem Sales division of Price Enterprises, Inc.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL NO. 1439, AFL-CIO